

# City of Cincinnati



Interdepartmental  
Correspondence Sheet

Date: November 20, 2007

To: Charles C. Graves III, Planning Director

From: J. Rita McNeil, City Solicitor

CC: Margaret Wuerstle, Chief Planner

Re: Appeals of Planning Commission Actions under Section 1429

**COPY**

## CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGED DOCUMENT

This memorandum is in response to your request for a legal opinion regarding whether a right of appeal attaches to the approval/disapproval of a Final Development Plan and, if so, which individuals may properly appeal.

### Background:

Chapter 1429 of the Cincinnati Municipal Code ("CMC") regulates the establishment of Planned Development Districts under the City's zoning authority. Planned Development ("PD") Districts are a flexible zoning designation which provide the property owners greater creativity, but require more extensive design review than typical zoning districts. There is a two-step process for establishment of a PD District: (1) submission of a concept plan and development program statement, included as part of the initial zoning map amendment and (2) submission of a final development plan, required before construction can begin. The map amendment must be approved by City Council; the final development plan requires only the approval of the City Planning Commission ("CPC"). CMC Section 1429-17 provides for appeals of the CPC decisions regarding final development plans.

### Analysis:

CMC Section 1429-17 states: "The City Planning Commission's denial of a request for renewal or revision of a final development plan or approval of a final development plan is subject to appeal to Council pursuant to § 111-3 of the Municipal Code." (emphasis added) Thus, the plain language of the provision provides a right of appeal from the denial or approval of a final development plan.

As indicated above, such appeals are conducted pursuant to CMC Section 111-3; however, the provision does not set forth in whom such rights are vested. CMC Section 111-3 provides that, "The appellant and any person who expressed a position in writing or testified in opposition below shall have an opportunity personally or through counsel to present arguments based on the evidence in the transcript. No other person

shall have any right to be heard.” Neither this provision, nor any other provision in the CMC specifies in which individuals the right of appeal provided for in CMC Section 1429-17 is vested. Accordingly, we consider case law and the prudential standing requirement, and look to other provisions of the Cincinnati Municipal Code for guidance.

In administrative appeals, courts have developed standing doctrines to assure that cases are litigated by parties who are both directly affected and have a genuine stake in the outcome of the case. Generally, owners of the property at issue and owners of contiguous or neighboring properties would meet such standards.<sup>1</sup>

Pursuant to Chapter 1449 of the Municipal Code, which governs administrative appeals relating to zoning issues, a “person affected” is defined as an applicant for a permit, a property owner, an owner or occupant of abutting property, any other person substantially and adversely affected, or a community council. Such affected persons are vested with the right of appeal from decisions by the Director of Buildings and Inspections, the Director of Community Development, the Zoning Hearing Examiner, and the Historic Conservation Board in matters relating to the zoning designations of property.

Construing both CMC Section 1429-17 and CMC Section 111-3 with the case law relating to prudential standing requirements and the definition of “person affected” under CMC for purposes of an administrative appeal relating to zoning, the right of appeal contemplated in CMC Section 1429-17 is most likely applicable to: (1) the property owner of parcel(s) within the relevant PD district, (2) any individual who expressed a position, in writing, regarding the relevant PD district, and (3) any individual, provided they demonstrate they are a “person affected,” who testified at the Planning Commission meeting in opposition to the relevant PD district.

### **Conclusion:**

CMC Section 1429-17 provides a right of appeal from the denial or approval of a final development plan. Given the language of the relevant CMC provisions and Ohio case law, it appears that the right of appeal contemplated in CMC Section 1429-17 is vested in: (1) the property owner of parcel(s) within the relevant PD district, (2) any individual who expressed a position, in writing, regarding the relevant PD district, and (3) any individual, provided they demonstrate they are a “person affected,” who testified at the Planning Commission meeting in opposition to the relevant PD district.

If you have any further questions regarding this matter, please do not hesitate to call me or Assistant Solicitor Julia Carney at 352-4703.

*h:\Boggs\Legal Opinions\Planned Development District*

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<sup>1</sup> *Scarberry v. Pataksala Bd. of Zoning Appeals* (1998), 716 N.E.2d 785.